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19 Excelsior Medical Corporation

20 **UNITED STATES DISTRICT COURT**
21 **SOUTHERN DISTRICT OF CALIFORNIA**

SHEPPARD MULLIN RICHTER & HAMPTON LLP
12275 El Camino Real, Suite 200
San Diego, California 92130

22 IVERA MEDICAL CORPORATION,

23 Plaintiff,

24 v.

25 EXCELSIOR MEDICAL
26 CORPORATION,

27 Defendant.

28
29 Case Nos. 11-cv-01115-H (RBB)
30 12-cv-01581-H (RBB)
31 (consolidated)

32 **NOTICE OF EXCELSIOR**
33 **MEDICAL CORPORATION'S**
34 **POSITION ON JOINT MOTION**
35 **FILED IN RELATED CASE**

1 PLEASE TAKE NOTICE THAT on June 17, 2013, the parties to *Ivera*
 2 *Medical Corporation v. Hospira, Inc.*, Case Nos. 11-cv-01246-H (RBB), 12-cv-
 3 01582-H (RBB) (consolidated), Ivera Medical Corporation (“Ivera”) and Hospira
 4 Inc. (“Hospira”), filed a joint motion for clarification or reconsideration with the
 5 Court regarding the Court’s June 5, 2013 Order Granting in Part and Denying in
 6 Part Hospira’s Motion to Modify the Claim Construction Schedule (the “Order”).
 7 (See Case No. 11-cv-01246-H-RBB, D.E. 75 at 2.)¹ In their motion, Hospira and
 8 Ivera explain why they do not believe that they should submit briefs addressing the
 9 construction of claim terms under the existing briefing schedule enumerated in the
 10 Order. (See *id.* at 2-4.) Since the Order applies to this action as well (see D.E. 42),
 11 Excelsior Medical Corporation (“Excelsior”) submits this notice to provide the
 12 Court with its position.

13 The Court’s Order found good cause to modify the claim construction
 14 schedule “with respect to the claims rejected by the PTO,” but instructed that
 15 briefing would still go forward on those “claims that the PTO did not reject.” (D.E.
 16 42). However, as noted in Ivera and Hospira’s joint motion, the only claims that
 17 were not rejected in the *inter partes* reexamination proceedings were *unasserted*
 18 claims; all of the *asserted* claims stand rejected. Since all of the asserted claims
 19 stand rejected, Excelsior maintains that claim construction briefing should be
 20 suspended per the Order, and that no party should brief terms of unasserted claims.
 21 Nevertheless, given certain language in the Order, like Ivera and Hospira, Excelsior
 22 also would benefit from clarification from the Court that no claim construction
 23 briefing need be submitted at this time.

24 _____
 25 ¹ The motion inadvertently refers to Case Nos. 11-cv-01246-H (RBB) and 11-cv-
 26 01582-H (RBB). Nonetheless, it is apparent that the motion relates to Case Nos. 11-
 27 cv-01246-H (RBB) and 12-cv-01582-H (RBB), which are pending patent
 infringement actions concerning Ivera Medical Corporation and Hospira, Inc.

CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that the foregoing was served by
3 electronically filing the same with the Court's CM/ECF system, which caused a
4 Notice of Electronic Filing to be emailed to the following:

Jonathan Hangartner
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This the 18th day of June, 2013.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By s/ Michael Murphy
MICHAEL

Atorneys for Defendant/Counterclaim Plaintiff
EXCELSIOR MEDICAL CORPORATION